

**05-61792 CIV-DIMITROULEAS**  
**TORRES**

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District Southern District of Florida	
Name of Movant <b>Dave Green</b>		Prisoner No. <b>69901-053</b>	Case No. <b>02-60286</b> ✓
Place of Confinement <b>Low Security Correctional Institution-Allenwood</b> <b>P.O. Box 1000, White Deer, PA 17887-1000</b>			
UNITED STATES OF AMERICA		v. <b>Dave Green</b> <small>(name under which convicted)</small>	
<b>MOTION</b>			
1. Name and location of court which entered the judgment of conviction under attack		<u><b>U.S. District Court</b></u> <u><b>Southern District of Florida</b></u>	
2. Date of judgment of conviction		<u><b>August 14, 2003</b></u>	
3. Length of sentence		<u><b>78 Months' Imprisonment</b></u>	
4. Nature of offense involved (all counts)		<u><b>Count One: Conspiracy to import five kilos</b></u> <u><b>or more of cocain. Count two: Conspiracy to possess with intent</b></u> <u><b>to distribute five kilos or more of cocain.</b></u>	
5. What was your plea? (Check one)			
(a) Not guilty <input type="checkbox"/>			
(b) Guilty <input checked="" type="checkbox"/>			
(c) Nolo contendere <input type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:			
<u><b>Plead guilty to count one in exchange for dismissal of count two.</b></u>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury <input type="checkbox"/>			
(b) Judge only <input type="checkbox"/>			
7. Did you testify at the trial?			
Yes <input type="checkbox"/> No <input type="checkbox"/>			
8. Did you appeal from the judgment of conviction?			
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

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 Case # **61792**  
 Judge **WPD** Mag **Torress**  
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9. If you did appeal, answer the following:

- (a) Name of court N/A
- (b) Result \_\_\_\_\_
- (c) Date of result \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court U.S. District Court Middle District of Pennsylvania

(2) Nature of proceeding Petition for a writ of habeas corpus pursuant to title 28 U.S.C. § 2241

(3) Grounds raised See attachment "A"

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result 2255 is appropriate, motion dismissed without prejudice

(6) Date of result April 27, 2005.

(b) As to any second petition, application or motion give the same information:

(1) Name of court U.S. District Court Middle District of Pennsylvania

(2) Name of proceeding Motion for reconsideration

(3) Grounds raised See attachment "A"

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result 2255 is appropriate, motion dismissed without prejudice(6) Date of result May 13, 2005

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☒ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I did appeal and the appeals court affirmed the district court deci-  
sion that a 2255 motion is appropriate which led me to file this motion.

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12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denial of effective assistance of counsel.

Supporting FACTS (state *briefly* without citing cases or law): My Lawyer failed to investigate and advise me that my rights were violated pursuant to consular access.

B. Ground two: Violation of my rights pursuant to Article 36 of the Vienna Convention on Consular Relation.

Supporting FACTS (state *briefly* without citing cases or law): The Vienna Convention confers every person arrested in a foreign country the absolute right to be advised by the arresting government of his or her right to consular access, Lawenforcement officials failed to appraise and avail me of that right.

C. Ground three: Violation of my due process rights.

Supporting FACTS (state *briefly* without citing cases or law): Me being an alien arrested in the United States of America should have been notified of my rights to consular access pursuant to a treaty signed by the United States of America.

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D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: None of the above were previously presented because during my entire arrest and court proceedings no one within lawenforcement or the judicial system including my attorney offered, advised, informed, nor did I acknowledged I had theses rights.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Bart Heffernan, Esquire88 Las Olas Blvd., Suit 601, Ft. Lauderdale, FL 33301(b) At arraignment and plea Same as above(c) At trial N/A(d) At sentencing Same as above

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(e) On appeal N/A

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-09-2005

Date



\_\_\_\_\_  
Signature of Movant

Dave Green/Reg. No. 69901-053

L.S.C.I.-Allenwood

P.O. Box 1000

White Deer, PA 17887-1000

**"A"**

Grounds raised: Violation of defendants due process rights by law-enforcement officials to appraise me of my rights under 8 C.F.R. § 242 to seek assistance from my nations consulate.

Violation of Article 36 of the Vienna Convention on Consular relation.

Placement of detainer on petitioner by the Bureau of Immigration and Custom Enforcement (BICE) illegally preclude my eligibility for various institutional programs and release to a halfway house.

Pusuant to the standard announced in INS v St. Cry, 533 US. 289 (2001) the BICE detainer is subjected to dismissal based on violation of petitioners right to request assistance from the Jamaican Consulate.

## PROOF OF SERVICE

I certify that on 11-09-2005 (date) I mailed a copy of this brief and all attachments via first class mail to the following parties at the addresses listed below:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

OFFICE OF THE CLERK

299 E. BROWARD BLVD.  
FT. LAUDERDALE, FL 33301

## PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 11-09-2005 (date) for forwarding to the Court of Appeals. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.



Signature Dave Green/ Reg Nö. 69901-053

L.S.C.I.-Allenwood

P.O. Box 1000

White Deer, PA 17887-1000

Dated: 11-09-2005